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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

1998 Biennial Regulatory Review --)
Streamlining of Radio Technical Rules in) MM Docket No. 98-93
Parts 73 and 74 of the Commission's Rules)

TO: The Commission

**COMMENTS
OF
SOUTH CENTRAL COMMUNICATION CORPORATION**

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South Central Communications Corporation ("SCCC"), submits hereby its comments in response to the Notice of Proposed Rulemaking and Order ("Notice") released on June 15, 1998 in the captioned matter.¹ In furtherance thereof the following is stated.

I. Preliminary Statement

1. SCCC, a family-owned entity, has been a Commission licensee of AM and FM radio stations for some 44 years and is presently the licensee and operator of seven FM and two AM stations in large to middle-size markets in the south central part of the nation.²

As such, SCCC has had substantial day-to-day experience with all facets of radio operations in the "real world" and throughout the evolution of Commission broadcast

¹FCC 98-117. The date by which comments may be timely filed was subsequently extended to October 20, 1998.

²Those stations are as follows: WIKY (FM), WABX (FM) and WJPS (AM), Evansville, IN; WJPS (FM), Chandler, IN; WJXA (FM), Nashville, TN; WRMX (FM), Murfreesboro, TN; WIMZ AM&FM and WJXB (FM), Knoxville, TN.

regulation over several decades. It is believed that such long-term experiences renders SCCC exceptionally well-positioned meaningfully to assist the Commission in its further consideration of the proposals herein.

2. SCCC supports most of the proposed changes advanced in the Notice, particularly those which look toward the “streamlining” of internal Commission processes incident to various applications and the adoption of presumably more realistic signal propagation methodology. Although the proposal respecting negotiated interference agreements has facial attraction, it presents substantial concerns respecting potentially unacceptable interference levels and the abrogation of the Commission’s mandate and practical responsibility directly to assure the best feasible service to the public. If implemented, it must be carefully crafted so as absolutely to avoid the potentially negative ramifications which the Commission has acknowledged in the Notice.

3. There exists, however, one aspect of the Notice with which SCCC is in strong disagreement and would urge the Commission not to adopt as proposed. Thus, it will be shown immediately below that there is no rational, operational or other need to “downgrade” certain Class C FM stations which do not operate at a specified height above average terrain. It will be shown, moreover, that the adoption and implementation of that proposal would tend mostly to compound the existing FM congestion -- which the Commission itself acknowledges in the Notice -- and to cause the degradation rather than improvement of that service to the public.

Exposition

II. The Proposal to Create a New Class of FM Service Should Not be Adopted

A. The Class C "Downgrade" Proposal Rests Upon a Flawed Premise

4. The Notice as such is largely driven by the mandated biennial review of the Commission's rules (Id. at ¶ 1). It reflects as well the Commission's laudable commitment to the "streamlining" of various of its procedural rules affecting broadcasters. (Id.). Among the 74 paragraphs discussing a variety of technical and procedural changes is the four paragraph treatment entitled "New Class C Height Above Average Terrain Requirements" (Notice, ¶¶ 40-44). That proposal is plainly not driven by a purpose to "streamline", new propagation methodology or, in fact, technical "flexibility" as such. On the contrary, it appears to reflect a visceral compulsion necessarily to "change " where only a "review" is directed. As shown below, the downgrade proposal is not only unwarranted but, if implemented, would be affirmatively inimical to the public interest.

5. The Notice's cryptic treatment of the instant downgrade proposal is rooted in the assertedly analogous circumstance which attended the "Docket 80-90" proceeding more than 15 years ago.³ On that basis alone, the present proposal is flawed.

6. It is decisionally instructive here to revisit the factual underpinning of the "80-90" proceeding. Thus, the Commission then was reasonably moved mainly by specific studies and particular analyses which identified an assertedly substantial need for additional FM

³Notice, ¶¶ 40-41, referring to the proceedings in BC Docket 80-90, 78 FCC 2d 1235 (NPRM, 1980), 94 FCC2d 152 (Report and Order, 1983), 97 FCC2d 279 (MO&O on reconsideration, 1984).

outlets throughout the nation.⁴ The Commission also concluded that the then - operating 3,800 FM radio stations were insufficient to satisfy the asserted need for additional FM service (94 FCC2d 152, 163). Incident to its adoption in 1983 of new rules, including those which would reclassify (downgrade) certain Class C FM stations not meeting new minimum height requirements, the Commission observed that, in its view, a "...pent-up demand [for new FM stations] will be unleashed...". (*Id.* at 181).

7. Assuming, arguendo, that the Commission was correct in its material findings with respect to a critical need for additional FM outlets in 1983, subsequent developments dictate the virtually irrefutable presumption that the then perceived need has been fully satisfied and that there today obtains no comparable need or demand. Such interest in new FM operations as may now exist reasonably reflects, in large part, an acceptable entrepreneurial bent, but by no means the wide-spread public interest compulsion found to dictate the exceptional 80-90 proceeding.

8. The foregoing readily appears from consideration of just the following. Thus, since the adoption of the new rules in 1983, there are now 1,836 more FM stations than were operating in 1983.⁵ Further, the instant proposal to downgrade certain FM stations is totally absent even the suggestion of an in-depth analysis or a study such as those which provided the decisional underpinning for the comparable undertaking some 15 years ago. On the contrary, the proposal is rooted in a bare, arithmetic finding that a given number of

⁴See, e.g., 94 FCC2d 152, at ¶¶ 7-23, wherein various of the studies and analyses are discussed in detail, leading to the Commission's then - conclusion that "... we are persuaded that there exists a substantial demand for new FM service that cannot be satisfied under existing rules.". (*Id.* at ¶ 23).

⁵There are now some 5,636 operating, commercial FM stations. See "Broadcast Station Totals as of August 31, 1998", FCC News release September 11, 1998.

Class C stations are now operating with facilities less than 450 meters height above average terrain, or 150 meters below the maximum height authorized for that class of station. (Notice, ¶ 42).

9. Although the Notice speculates that such operations at less than maximum facilities "...may unnecessarily preclude proposals to introduce new and/or expand existing services." (Id.), it offers no evidence of thoughtful analysis beyond that banal observation. It is upon that essentially visceral premise that the Commission would now put into jeopardy the existing services of hundreds of Class C FM stations and, as importantly, expose the relevant public to the degradation of service which, in the current congested FM environment, would inevitably attend implementation of the proposal (as demonstrated, infra).

10. It is worthy of repetition that the Commission must in this instance strongly resist the tendency necessarily to change its regulations where, as here, it has been directed principally to review their efficacy.⁶ Here, there is no compelling public interest basis for the proposed "downgrades" in the first instance. As shown below, the implementation thereof would, moreover, be inconsistent with that interest.

⁶That caution is properly noted in the "Separate Statement of Commissioner Harold W. Furchgott-Roth" attending the instant Notice, to wit: "In one important respect ... the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- 'Biennial Review'... requires only that the Commission determine [emphasis in original] whether any such regulation is no longer necessary in the public interest." (Emphasis added).

B. Implementation of the Class C "Downgrade" Proposal Would Tend More to the Degradation than Improvement of FM Service to the Public

11. The Commission's consideration of the related "negotiated interference" proposal proceeds from its seminal observation that there is "Increasing congestion in both the reserved and non-reserved portions of the FM band...". (Notice, ¶ 3). In the same context it is further stated that "Congestion in the FM band provides a major technical impediment to the further "urban clustering" of stations. "(Id. at ¶ 18). It is there noted, as well, that "Radio is truly a mature service", in part reflected by the fact that there are now some 12,000 radio stations operating in the various services. (Id.) Thus, the Commission itself acknowledges at the outset a materially different environment than that which existed at the time of, and in large part drove, the 80-90 undertaking. More importantly, that acknowledgment points up the principal factor which, in turn, renders the Class C "downgrade" proposal an anathema, i.e. in an already congested FM environment, implementation of the proposal would inevitably cause the loss of existing service and widespread interference without any offsetting public interest benefit.

12. The foregoing, and related points, are further demonstrated by the "Engineering Statement" of Smith and Fisher, appended hereto ("the Statement").

13. The Statement demonstrates at the outset that "Flexibility in site selection is vitally important to FM broadcasters, because conditions are constantly changing in ways that cannot be readily predicted.". (Id., page 3). Adoption of the instant proposal would effectively relegate Class C stations which cannot presently achieve the conforming HAAT to their present facilities in virtual perpetuity even where relevant changes in extrinsic factors would subsequently have allowed for a "conforming" increase in height.

14. As importantly, the Statement clearly demonstrates that the existing, useful service provided by Class C stations with HAAT lower than the apparently arbitrarily selected level of 450 meters extends substantially beyond that decisionally assumed by the Notice (Id., ¶¶ 3-5).⁷ It is stated, as well, that the typically affected Class C station "... would lose a significant area to interference as a result of the downgrading..." (Statement, page 4).

15. The Statement also advances a related consideration which affords a stark indication of the potential negative public interest ramifications which would attend the logical extension of the downgrading bent reflected by the Notice, to wit:

If efficiency in spectrum allocations is achieved by packing as many allotments as possible into a given frequency band, then the more classes of station that are created, the more efficient the system becomes, with ultimate efficiency resulting from an infinite number of station classes. In other words, each station would be protected only to the extent that its presently existing facilities dictate. This is how the AM band is allocated, and that system has served for years as a dreadful example of spectrum engineering. (Emphasis added).

16. The long-term operations and relevant experience of SCCC are fully consistent with the substance of the Statement. Among SCCC's licensed radio stations are two Class C FM facilities that would at this point be subject to the proposed downgrading, i.e. Station WJXA, Nashville, TN, and WJXB, Knoxville, TN.⁸ Both stations, operated by SCCC for many years, are widely acknowledged to be state-of-the-art operations technically, with

⁷As discussed, infra, the receivable and useful service of the SCCC Class C stations potentially affected by the downgrade proposal extends even beyond that demonstrated in the Statement.

⁸The stations presently operate with 100kw power and heights above average terrain of 321 meters and 395 meters, respectively.

comparably superior staffing, programming and overall facilities. Each, however, is presently limited to its existing site and height by various factors including FAA restrictions, local zoning provisions, community coverage requirements and other extrinsic factors. To the extent that a change in any one, or a combination of, such limiting factors may occur, SCCC would logically consider facilities modifications, including an increase in HAAT, where that would meaningfully expand its actual service area.

17. Notwithstanding the extant limitations upon SCCC's relevant stations, it is an indisputable fact that the practical, receivable and useful service now rendered by both extends significantly beyond the critical assumption which in large part underlies the Notice's proposal potentially to downgrade such facilities. It is equally clear that such downgrading would cause the loss of that existing service.

18. As demonstrated in the Statement, there is a strong presumption that the effective service of a Class C station extends beyond its "protected" contour (Statement, page 4 and Figure 1). SCCC's long-term, operating experience both confirms that presumption as a practical matter and suggests that such service extends in many instances even beyond that shown in the Statement's hypothetical model. Thus, on a virtually daily bases over many years, the stations are in communication in a variety of ways with individuals, communities and businesses within their practical service area, that being a necessary element of both effective public service and operational success. As well, the stations have available various guides and schedules to assist in the assessment of their practical reach. All such mechanisms reflect an extended, receivable and useful service such as noted above.

19. The Statement also demonstrates that the extended service in question would ultimately be lost in those instances where an affected Class C station may be downgraded to a Class CO facility.⁹ It is well-settled that any loss of service is prima facie inconsistent with the public interest and can only be justified by substantial, offsetting public interest benefits. See, e.g., Hall v. FCC, 237 F.2d 567, 572 (D.C. Cir. 1956). That is particularly so where, as here, such service loss would involve an existing station. See John McCutcheon dba MCC Communications, 4 FCC Rcd 2079, 2082 (1989). Here, there is no public interest requirement for the proposed downgrading in the first instance. Where, as here, implementation of the proposal would plainly exacerbate the acknowledged congestion in the FM service, and occasion a significant loss of existing service, there is no rational warrant for its adoption.

III. The Proposal to Allow Negotiated Interference Agreements is Highly Problematic and, Absent a Compelling Record, Should Not be Adopted as Proposed

20. The Notice's consideration of the "negotiated interference" proposal (Id. ¶¶ 17-27) properly proceeds upon the Commission's acknowledgment of its traditional and extreme reluctance to permit the creation of interference within a station's protected contour, particularly where none previously existed. (Id. at ¶ 17). Elsewhere, the Commission points to its "... core obligation to preserve the technical integrity of the FM band..." and the strong line of decisional precedent rejecting proposed interference

⁹The presumption of such service loss is in fact a necessary element of the downgrading proposal as such.

agreements on the ground that "... the selection of interference standards is a non-delegable Commission responsibility.". (Notice, ¶¶ 3-4).

21. Although the Commission observes that the instant "...technical streamlining initiative provides an opportunity to reconsider our policy options..." with respect to negotiated interference in the FM service (Id., ¶ 18), its apologia for the rule changes proposed prompts mainly the question "why"?, coupled with the real concern that the changes will serve as well to create an administrative and legal morass to no meaningful public interest end.¹⁰ Where, as here, the proposed changes look toward the creation of interference in an already congested environment and at least present a question as to an abrogation of the Commission's legal responsibility, the proposal must be viewed as dubious at best.

22. At paragraph 27, the Notice puts several specific questions as to which it requests comment respecting the negotiated interference proposal. In the interest of efficiency, SCCC offers the following seriatim observations in response to the bulk of such inquiries: (1) the proposed procedures would not and could not protect the interests of those not party to a negotiated interference agreement, including affected smaller communities and/or less desirable demographic audiences; (2) there is a substantial likelihood that such agreements may in fact limit desired technical flexibility in the future

¹⁰It serves to compare the stated purpose of the proposal, i.e. "...to permit small amounts of interference in limited circumstances..." (Notice, ¶ 27), with the rather elaborate and partially arcane process and procedures which would attend its pursuit. See, e.g., Notice, ¶¶ 21-24.

and that the accumulation thereof would contribute to the already emerging degradation of the FM service across the nation, and (3), as noted above, the proposal plainly presents a question as to the Commission's proper acquittal of its "allocation" responsibilities, including its mandate under § 307(b) of the Commissions Act.

IX. Other Proposals

23. With the exception of the two proposals discussed above, the balance of the Notice advance meritorious changes. Among those appearing to have particular merit is the proposed point-to-point prediction model (Notice, ¶¶ 29-35). To the extent that the proposal services further analysis in the course of this proceeding, its potential to provide more accurate contour predictions should serve well the interests of the Commission, the affected broadcasters, and thus, the public. As well, the various procedural changes proposed in Section III E. of the Notice (¶¶ 45-53) would appear to be particularly commended to the extent that they would in fact simplify existing application processes.

Respectfully Submitted

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October 20, 1998

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ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of SOUTH CENTRAL COMMUNICATIONS CORPORATION ("SCC") in support of its Comments in MM Docket No. 98-93, in which the Commission proposes a number of changes in its technical Rules on FM broadcasting. These Comments are directed toward the proposal to break the Class C stations into Class C and Class C0, the latter having effective antenna height of no more than 450 meters.

SCC is the licensee of two stations that would be adversely affected by this proposal. WJXA, Nashville, Tennessee, is a Class C station operating with 100 kw at 321 meters, and WJXB, Knoxville, is a Class C station operating with 100 kw at 395 meters. SCC believes that if this proposed Rule is adopted, affected stations will lose important flexibility for future needs. More important, interference will ultimately eliminate existing service by these two stations and others under similar circumstances. Such a loss of existing service cannot be in the public interest.

* * *

BC Docket No. 80-90 made a number of dramatic changes in how the FM spectrum is allocated, but the only unprecedented change was to consider antenna height in classifying FM stations. Class C stations were broken down into Class C and Class C1, with the breakover height being 300 meters.

Whether or not this was a good idea, it certainly caused a great many problems, both for government and for industry. A vast number of Class C stations with modest height sought FAA approval of height increases. When this failed, stations sought to relocate to sites favored by the FAA, often seeking waiver of FCC spacing requirements. After the three-year grace period, many Class C stations were reclassified, but many difficult proposals intended to maintain Class C status remained pending for years.

The problem was—and still is—that broadcasters typically seek to maximize coverage and usually fail to do so only when a combination of FAA Regulations and FCC Rules preclude such an improvement. They then do the best they can, understanding that these limitations are not static. FCC Rules rarely change, but sometimes a relaxation such as §73.215 is adopted, affording stations some flexibility in seeking maximum facilities. More often, FAA limitations change. Old airports are relocated, or their runways are reconfigured, revising the patterns of allowable airspace. Now and then, the acceptance of a new tall tower may open up the possibility for another tall tower construction in another place, based on changed flight procedures. Typically, broadcasters stymied in their attempts to maximize facilities simply operate as best they can, availing themselves of feasible improvement opportunities as they present themselves.

The Commission seems to be of the opinion that stations with sub-maximum antenna height have simply elected to operate that way. Although some may have done so, many have not and have unsuccessfully sought improvement over the years. Further, the flexibility to relocate facilities as conditions change is of great significance to a broadcaster

although not always fully appreciated by the Commission. An example is the Rules regarding FM stations with existing second- or third-adjacent-channel shortspacings. From the 1960s such existing shortages could be ignored by a station seeking to move or improve. Subsequently, because the Commission presumed that all stations wishing to take advantage of this Rule relaxation had already done so, it deleted this flexibility from its Rules. However, when the Commission processes became clogged with waiver requests from stations needing to change facilities but unable to comply with the more restrictive Rules, the Commission reinstated that provision for flexibility in MM Docket No. 96-120.

Flexibility in site selection is vitally important to FM broadcasters, because conditions are constantly changing in ways that cannot be readily predicted. At the same time, efficiency in spectrum management, on which basis this proposal is predicated, is an important goal. Since efficiency is gained at the expense of this needed flexibility, efficiency is hardly an unalloyed benefit.

* * *

The adoption of the subject proposal would lead to a loss of existing service, which also cannot be considered in the public interest.

The Commission's spacing Rules are intended to protect Class B and B1 stations to their 54 db μ contours and all other classes of station to their 60 db μ contours. The fact that the 54 db μ contours of Class B and B1 stations are protected indicates that the Commission believes that adequate reception is possible at this signal level. Thus, although a

Class C station is protected only to its 60 db μ contour, it should provide service out to at least its 54 db μ contour in the absence of interference.

Consider the hypothetical Class C station in Figure 1. It is assumed to operate with 100 kw at 358 meters, which is the average of the effective heights of WJXA and WJXB. In smooth terrain its 60 db μ contour extends 76.7 kilometers, and its 54 db μ contour extends 90.4 kilometers. As Class C, this station is protected to its 60 db μ contour, assuming operation with 100 kw at 600 meters. Since the contour from 600 meters would extend 91.8 kilometers, the station is protected to this distance, permitting its actual 54 db μ contour to be interference-free.

If our hypothetical station were downgraded from Class C to Class C0, it would be protected only to the 60 db μ contour that would obtain with 100 kw at 450 meters. As shown by the dashed-line contour in Figure 1, this station would then be subject to interference over a substantial portion of the area between its 60 db μ and 54 db μ contours. In this particular case, the potential service loss would include 3,822 square kilometers.

Of course, this service loss would not be immediate but would grow, little by little, as new stations go on the air, or existing stations upgrade themselves by taking advantage of the downgraded station. Indeed, if this service reduction did not occur, the Rule change would be for naught.

It is clear that our hypothetical station, typical of those that would be downgraded to Class C0 status, would lose a significant area to interference as a result of the downgrading. It has never been considered that the public interest is served by removing existing

service in one place to create new service somewhere else. This is particularly true when there is no demonstrated demand for such new service.

In addition, the loss of service by the downgraded station would be in fringe areas, which tend to enjoy relatively few aural services compared with how many may be available in the community of license. Thus, service loss in this case occurs exactly where such loss is most injurious.

*

*

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Because communities are not arranged in a geometric grid, spectrum allocations have always been inefficient to one extent or another. However, this very inefficiency has meant that FM stations typically are not so surrounded by interfering stations that interference-free service ends at the protected contour in all directions. Similarly, stations with sub-maximum facilities have often been able to serve an extended audience, because they have been protected as though they operated with maximum facilities. As a result, a pattern of listenership develops which does not directly match the coverage contemplated under the Rules. If the Rules are changed as proposed, this *de facto* pattern of coverage can be destroyed. Further, because co-channel and first-adjacent-channel interference is caused far beyond a station's service range, the resulting interference tends to outweigh the new service.

If efficiency in spectrum allocations is achieved by packing as many allotments as possible into a given frequency band, then the more classes of station that are

created, the more efficient the system becomes, with ultimate efficiency resulting from an infinite number of station classes. In other words, each station would be protected only to the extent that its presently existing facilities dictate. This is how the AM band is allocated, and that system has served for years as a dreadful example of spectrum engineering.

On these bases, the Commission should maintain the integrity of the FM allocation system by abandoning the idea of an FM Class C0.



NEIL M. SMITH

October 8, 1998

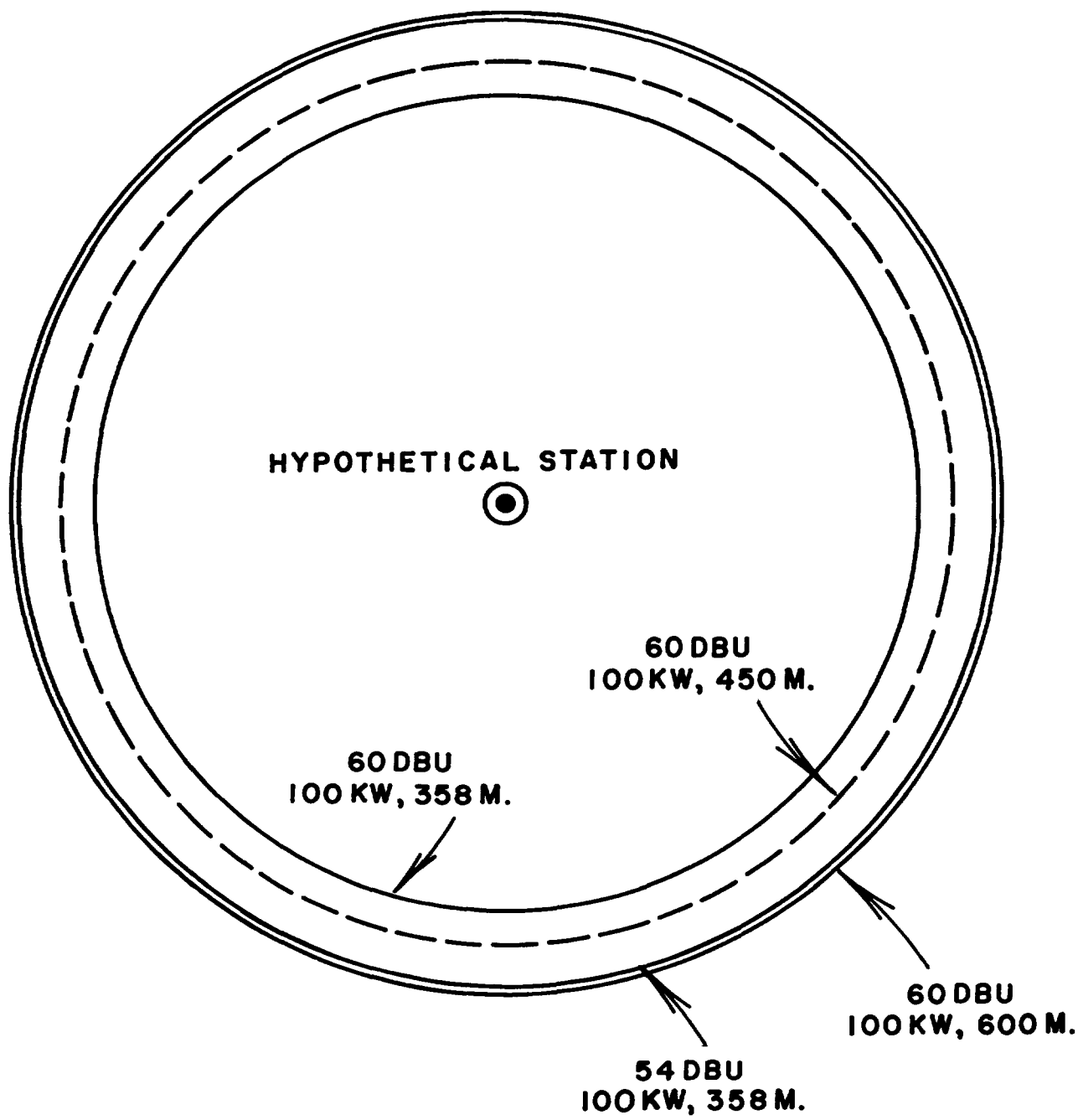


FIGURE 1

